notice repudiated further performance of the contract. *Held,* two judges dissenting, waiver of prior breaches was no assurance as a matter of law that the plaintiff could disregard the contractual provision as to payments subsequently accruing. *Heller & Bro.* v. *Continental Mills* (1st Dept. 1921) 196 App. Div. 7.

The case presents the question as to whether a waiver of prior breaches licenses a subsequent breach. Usually, where a condition may be breached several times, a waiver excuses all prior breaches, but does not discharge the condition. *Fidelity Trust Co.* v. *Kohn* (1904) 27 Pa. Super. Ct. 374; *Douglas* v. *Herms* (1893) 53 Minn. 204, 54 N. W. 1112; *contra, Chalker* v. *Chalker* (1814) 1 Conn. 79. A few cases state, however, that where a custom of waivers has been established, a landlord cannot enforce a forfeiture unless he gives notice that such will be the effect of any future breach. See *Westmoreland, etc. Gas Co.* v. *DeWitt* (1889) 130 Pa. St. 235, 254, 18 Atl. 724. If a condition is susceptible of only one breach, like the condition against assignment in a lease, a waiver of the breach discharges the condition. *Dumpor's Case* (1603) 4 Co. 119b. Wherever a covenant is also a condition, a waiver of the breach of condition does not prevent a recovery of damages for breach of the covenant. *Rouiaine* v. *Simpson* (1903) 84 N. Y. Supp. 875. If the promisor has expressly or impliedly represented that he would not avail himself of a breach of condition there is a waiver. *Thayer* v. *Meeker* (1877) 86 Ill. 470; see 2 Williston, *Contracts* (1920) 1334. As there was no allegation that the prior waivers raised an implied promise of future waivers, the principal case seems sound.

CONTRACTS—JOINT AND SEVERAL OBLIGATIONS—EFFECT ON THIRD DEFENDANT OF DISMISSAL OF CO-DEFENDANTS.—The plaintiff was the holder of a promissory note on which X, Y, and Z were jointly and severally liable. Suit against the three was dismissed as to X and Y and judgment was entered against Z. Z appealed. *Held,* Z was released. *Whitescarver* v. *Waldo* (Colo. 1920) 194 Pac. 618.

A judgment upon the joint obligation, until satisfied, does not merge the several obligations of the other joint and several obligors. *Turner* v. *Whitmore* (1874) 63 Me. 526. But, like the instant case, if one of the joint and several obligors is released, all are released. *Crawford* v. *Roberts* (1880) 8 Ore. 324. The reasoning is that the release destroys the right of contribution of the other obligors. See *Clark* v. *Mallory* (1898) 83 Ill. App. 488, 492. Courts regard a joint and several obligation one way when dealing with a case involving a prior judgment for the plaintiff, and another when dealing with a release to one obligor. This divergence of view springs from the nature of the right of contribution. An obligation, though joint and several as regards the obligee, is joint as between the obligors. *Owens* v. *Blackburn* (1919) 161 App. Div. 827, 146 N. Y. Supp. 966. The right of contribution arises upon discharge of a joint liability by one of those liable. *Watkins* v. *Woodbery* (1919) 24 Ga. App. 80, 100 S. E. 34. Since the right of contribution is discharged against the released obligor, it is only just that the obligee's action against the others should perish, he himself having released the one obligor. But since a judgment against one obligor creates the right of contribution, the obligee should be permitted to proceed to judgment on the several obligations until one is satisfied. But it seems harsh that a release of some of the obligors effected through an adverse judgment, and not by personal act of the obligee, should bar the obligee from recovery. However such seems to be the common law rule, applied correctly in the instant case.

CORPORATIONS—CONTRACTS—AGREEMENT TO PAY SUM EQUAL TO DIVIDENDS.—The plaintiff entered the defendant's employ under an agreement whereby the

former was to receive from X, as additional compensation, a sum equal to the dividends on forty-five shares of the stock of the defendant corporation of which he was record owner. No dividends were declared. The plaintiff was wrongfully discharged. In a suit for a sum equal to forty-five per cent of the profits, *dictum*, no recovery at law since no dividends had been declared. *Avedon* v. *Gem Dress House Inc.* (1st Dept. 1921) 194 App. Div. 678.

The declaration of dividends is ordinarily within the discretion of the directors. *Hyams* v. *Old Dominion Copper Min. etc. Co.* (1913) 82 N. J. Eq. 507, 89 Atl. 37. The stockholder has no right to corporate assets until after dividends have been declared. See *Beveridge* v. *New York Elevated R. R.* (1889) 112 N. Y. 1, 27, 19 N. E. 489. A court will not compel the declaration of dividends unless the management is arbitrary or capricious. See *Marks* v. *American Brewing Co.* (1910) 126 La. 666, 671, 52 So. 983. And so long as the directors act honestly no proceedings can be maintained against them in spite of a very large surplus. *Marks* v. *American Brewing Co., supra;* see *Burden* v. *Burden* (1899) 159 N. Y. 287, 308, 54 N. E. 17. Also in the absence of oppression equity will not decree the declaration of dividends. See *Gehrt* v. *Collins Plow Co.* (1910) 156 Ill. App. 98, 103. But where it can be shown that a dividend is withheld to defraud a stockholder, the court will interfere and award a sum equal to what the dividend should have been. *Lawton* v. *Bedell* (N. J. Eq. 1908) 71 Atl. 490. In the instant case the plaintiff is clearly being denied a substantial part of the recompense for his labors for the corporation. And as X, the person liable to him, is one of the two directors in control of dividend action, it appears in the light of the amount earned by the corporation, that the conduct of the directors was of a nature to warrant interference by a court. The court was undoubtedly correct in denying a recovery; but, being a stockholder, it seems that the plaintiff could maintain an action for the declaration of dividends.

DESCENT AND DISTRIBUTION—STATUTES—ADOPTIVE PARENTS.—A Kansas statute (Gen. Stat. 1915, §§ 3842, 3843) provides: "If an intestate leave no issue, the whole of his estate shall go . . . to his parents. If one of his parents be dead . . . to the surviving parent." An adopted child died intestate leaving a natural mother and his adopting parents. *Held,* "parents" include parents by adoption, and natural as well as adopting parents inherit. *In re Yates' Estate* (Kan. 1921) 196 Pac. 1077.

Statutes which provide that an adopted child is for all purposes to be regarded as born in lawful wedlock, but which are silent as to the parents, are construed to mean that the adopting parents may not inherit. *Edwards* v. *Yearby* (1915) 168 N. C. 663, 85 S. E. 19; *Reinders* v. *Koppelmann* (1878) 68 Mo. 482. On the other hand, an adopting parent has been allowed to inherit in preference to the natural parents where the statute provided that the adopted child and adopting parents "shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation." *Estate of Jobson* (1912) 164 Cal. 312, 159 Pac. 606; *Calhoun* v. *Bryant* (1911) 28 S. Dak. 266, 133 N. W. 266. This construction is upheld on grounds of natural justice, since the adopting parents use their property to rear the child and thus relieve the natural parents of the burden of support. See *Humphries* v. *Davis* (1884) 100 Ind. 274, 275. A Kansas statute provides that " . . . such person so adopting such minor shall be entitled to exercise any and all the rights of a parent . . . " Kan. Gen. Stat. (1915) § 362. "All the rights" would seem to include the right to inherit. But to allow the natural mother to share with the adopting parents is clearly contrary to the provisions of the statutes. They contemplate the distribution of the property among not more than two people, see Kan. Gen. Stat. (1915) §§ 3842,